

Phone (206) 466-3163

Swinomish Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant To 25 U.S.C. § 476

P.O. Box 817 • 950 Moorage Way
LaConner, Washington 98257

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JUN 29 '89

EPA-WOO

June 23, 1989

Cecil D. Carroll
Assistant Regional Administrator
U.S. Environmental Protection Agency, Region 10
c/o DOE, PV 11
Olympia, WA 98504

Dear Cecil,

We are very pleased to present you with our Application for Tribal Primacy as a prerequisite to the issuance of a Section 106 grant. We trust the enclosed documentation will demonstrate the authority and capability of the Swinomish Indian Tribal Community in meeting EPA requirements for "Primacy" designation pursuant to the 1987 Clean Water Act.

The enclosed narrative brings together the institutional components which serve to document our capabilities for developing and promoting effective environmental programs, both within and cooperatively outside Reservation boundaries.

We look forward to cooperating with EPA as a capable governmental body in developing and carrying out innovative environmental programs benefitting both the Tribal and regional community.

Sincerely,

Robert Joe, Sr., Chairman
Swinomish Indian Senate

enclosure

DOCUMENTATION SUPPORTING THE APPLICATION FOR "PRIMACY" DESIGNATION

Pursuant to U.S. Environmental Protection Agency Section 106 Grant Resolution

**THE SWINOMISH INDIAN TRIBAL COMMUNITY
June 27, 1989**

Prior to the award of grants to Tribes under section 106 of the Clean Water Act, Tribes must qualify as states under EPA guidelines.

Section 518(e) of the Act establishes four requirements which Tribes must meet to be treated as a state. These are:

1. Proof that the Tribe is Federally recognized;
2. Documentation that the Tribe performs essential sovereign functions;
3. Documentation of Tribal authority to manage and protect their water resources; and
4. Description of Tribal capability to administer and manage environmental programs.

The following document addresses and substantiates these four requirements.

1. PROOF OF FEDERAL RECOGNITION:

The Swinomish Indian Tribal Community is a federally recognized Indian Tribe, organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476) and is presided over by its constitutionally formed governing body, the Swinomish Indian Senate.

As published in the December 29, 1988 Federal Register/Vol. 53/No. 250, on page 52829, the Tribe is officially recognized as eligible to receive BIA services. (Attachment 1)

2. SUBSTANTIAL POWERS AND DUTIES

By authority of the Constitution and Bylaws of the Swinomish Indian Tribal Community, the Swinomish Indian Senate is the governing body of the Tribe as found in Article III, Section 1 (Attachment 2).

Originally adopted in 1935, the Constitution as amended, contains:

- 2.1 Tribal name and legal territory
- 2.2 Tribal membership requirements
- 2.3 Governing body make-up, election, and powers
- 2.4 Bill of rights regarding; voting, equal opportunity, freedom of expression,
and due legal process
- 2.5 Tribal land ownership and leasing

The enumerated powers of the Senate are found in Article VI, Section I of the Constitution and authorize the Senate to act on the Tribe's behalf to:

- 2.6 Negotiate with Federal, State, and local governments;
- 2.7 Impose taxes and license fees upon the Reservation population;
- 2.8 Enact resolutions and ordinances governing conduct of the Reservation population in providing for maintenance of law and order and establishing a Tribal Court system; and
- 2.9 Safeguard and promote the peace, safety, and general welfare of the Reservation population.

Additional Senate authority is found under their Reserved and Additional Powers, Article VI, Section 4 and 5. These, respectively, empower the Tribe to exercise their traditionally vested rights and powers not found in the Constitution, and to regulate all land uses within the Reservation through their land use zoning powers.

Under the adopted ByLaws, a description of the Senate organization includes:

- 2.10 Duties of appointed officers ;
- 2.11 Senate membership requirements;
- 2.12 Time of annual election and general council meeting;
- 2.13 Quorum requirements; and
- 2.14 Requirements for adoption of ordinances and resolutions.

Nomination for election is by petition. Annual elections and a general council meeting are held in February. The Tribal membership constitutes the General Council and a report of the past year's accomplishments and proceeding year's plan are reported to the Council by the Senate. Senate officers are internally elected for a five year period and appoint committees to report to them. (See Attachment 3 for general organization.)

The Swinomish Tribal Senate maintains that the adopted regulatory ordinances of the Swinomish Tribal Code apply to Indian and non-Indian activities and lands within Reservation boundaries. Recent Federal Court decisions have upheld that authority. This would certainly apply to water quality protection, since this affects the health and welfare of the entire Reservation.

Ordinances adopted by the Senate into Tribal Code include:

- a. **Interim Water Code**, establishing Tribal rights over waters of the Reservation and prohibiting water withdrawal and use if it adversely affects the Tribe.
- b. **Health and Sanitation Code**, establishing domestic water and sewage disposal facility standards, biocide regulations and addressing other health and sanitation matters.
- c. **Swinomish Utility and Environmental Services Ordinance**, defining the policies of, and organization for, drinking water, wastewater, and solid waste utility management.
- d. **Tribal Environmental Policy Act**, setting out an environmental impact checklist, scoping and assessment procedure.
- e. **Swinomish Zoning Ordinance**, delineating land use area designations, allowable uses and the land use development permit process.
- f. **Swinomish Coastal Zone Plan**, establishing goals, policies and performance standards for land use activities on the Reservation with special emphasis on impacts to shoreline and marine resources.
- g. **Swinomish Cultural and Environmental Protection Agency Ordinance**, which establishes a five member administrative and appellate body to protect air and water quality and control hazardous waste and pesticides. Their primary responsibilities are to recommend environmental policies and formulate an environmental protection plan, negotiate cooperative agreements with all government levels, seek state and federal agency support for Tribal environmental programs, and hear appeals from parties affected by Tribal actions as part of this program.

3. TRIBAL WATER RESOURCE AUTHORITY

The Tribe retains Allan Olson as Chief Legal Counsel, Rusty Kuntze as Attorney, and Richard Du Bey as retained environmental counsel to interpret and draft laws protecting Tribal interests. Enclosed as Attachment 4, are two documents describing Tribal authority to regulate water resources. The first, by Richard Du Bey is a general analysis of Tribal Authority. The second, by Allan Olson, more specifically describes Swinomish Tribal authority for purposes of this document.

4. TRIBAL CAPABILITY

The Tribe's capability to carry out water quality management can be satisfied by the existing staff. The planning staff consists of the General Manager/Planning Director, an Assistant Planner, Environmental Planner, and a Facilities Projects Manager. A full-time Tribal Attorney and part-time Associate Attorney provide direct legal support to the Tribe and Planning Staff.

Both the General Manager/Planning Director and Tribal Attorney have been overseeing the planning, economic development, and legal affairs of the Tribe for 10 and 9 years, respectively.

The General Manager holds a Masters Degree in Geography and Environmental Planning and is completing a Doctoral degree in Urban Planning. He is a member of the American Institute of Certified Planners. The Tribal Attorney holds a Juris Doctoral Degree and is licensed to practice law in Washington, the U.S. federal courts, and the Swinomish Tribal Court.

The Associate Planner holds a B.A. degree in Environmental Planning and has worked for the Tribe for over five years. The Environmental Planner holds a Masters Degree in Cultural Geography and has worked for the Tribe for almost a year. He has had over seven years management experience in non-point water pollution control programs. The Facilities Project Manager has a Professional Engineering degree and has served as public works director for metropolitan municipalities for over two decades.

The length of staff service indicates Tribal resourcefulness and initiative as well as stability.

Representative programs managed or overseen by the Tribe include:

4.1 Swinomish Utility Authority. An independent sub-unit of Tribal government that is responsible for the safe, cost-effective, and self-sufficient operation and management of drinking water, wastewater, and solid waste utilities. As part of this program, older sewer lines are being cleaned and sealed to prevent groundwater contamination.

4.2 Tribal Health Program. This includes caring for the basic health needs of the Tribal Community members, as well as programs implementing the Health and Sanitation Code, including environmental health programs, and community safety. As part of the health program, the Tribe's drinking water system is regularly sampled in conformance to federal Safe Drinking Water Act requirements.

4.3 Land Use Planning and Zoning. The Draft Swinomish Comprehensive Plan is the culmination of a joint planning effort by the Swinomish Community and Skagit County Planning Department resulting from a Memorandum of Understanding signed in March of 1988.

The Plan lists Tribally expressed goals and policies aimed at guiding and regulating land uses while preserving and protecting the natural environment and Tribal cultural values. The Plan seeks to identify and restrict population growth levels for the Reservation, and provide suitable land supply to meet these determined growth levels. The Plan assures the protection of identified environmental, cultural, and natural resources including groundwater recharge areas, streams, and shorelines, from adverse urbanization. Underlying and directing the Plan is the Tribe's unique heritage and sovereignty and commitment to preserving their environmental and cultural heritage.

4.4 Drinking Water Quality Protection. The Tribe has applied for a grant to delineate a wellhead protection area around three wells supplying drinking water to both Tribal and non-Tribal residences, commercial enterprises, and administrative buildings. This is the largest public water supply system on the Reservation. The grant provides for joint responsibilities between the USGS and Tribe to determine the recharge area surrounding the wells. The funding source is the Centennial Clean Water funds administered by the state Department of Ecology. If successful, funding would be available in October or November of 1989.

4.5 Non-Point Source Pollution. The Tribe has taken the lead in three programs to address non-point source pollution affecting Skagit and Similk Bays. These are described below.

4.5.1. Wastewater Facilities Planning: Wastewater facilities planning by the Tribe will result in the construction of a sewer trunk line and service to over 200 homes now served by outdated septic systems and a failing primary treatment system. The improvements, in addition to improved on-site wastewater disposal regulations, will eliminate much of the bacterial pollution affecting northern Skagit Bay.

4.5.2. Regional Monitoring: The Tribe is a member of the Skagit System Cooperative, a three-Tribe fisheries management organization. The Cooperative is presently gathering and cataloging land use, topography, and non-point pollution data on Skagit River tributaries as part of its overall fisheries evaluation. In 1990, they will cooperate with Skagit County in a multi-year water quality monitoring program within the Nookachamps River basin. Seven or more stream and lake sites will have nitrate, dissolved oxygen, coliform bacteria, turbidity, and b.o.d. samples collected monthly to determine condition of fisheries habitat and Basin water quality. This effort is being funded by the Department of Ecology.

4.5.3. Regional Implementation Plan: The Tribe and Skagit County have jointly been awarded a Section 205J grant to develop a non-point protection program affecting the marine waters adjacent to the Reservation.

Tribal Accounting and Procurement

Certification of the Tribes accounting and procurement system was provided by a Certified Public Accountant in 1989. A copy of this certification is included as Attachment 5.

Comprehensive Governmental Authority

Tribal mechanisms for carrying out its executive, legislative, and judicial functions have been described under the section, Substantial Powers and Duties. The ability, or authority to enact, administer, and enforce regulations resides wholly within the Tribal Constitution and ByLaws and by their formal adoption by Tribal members and approval by the BIA. Specifically, the Senate powers to employ legal counsel, levy taxes, enact resolutions and ordinances, promulgate and enforce ordinances, and provide a police and court system, give the Senate the complimentary range of powers required to govern the Reservation and tribal community.

RESOLUTION NO. 89-6-45

RESOLUTION ESTABLISHING AN
ENVIRONMENTAL PROTECTION PROGRAM
ON THE SWINOMISH INDIAN RESERVATION

WHEREAS, the Swinomish Indian Tribal Community is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934; and

WHEREAS, the Swinomish Indian Senate is the governing body of the Swinomish Indian Reservation located near the Town of LaConner, Washington; and

WHEREAS, the Tribe depends entirely on its groundwater aquifer for drinking water and will be supplying the Reservation's growing domestic water needs; and

WHEREAS, the U.S. EPA's Safe Drinking Water Act (SWDA), and Clean Water Act (CWA) provides technical and financial assistance to Tribes in protecting their groundwater for public domestic use; and

WHEREAS, to assume primary enforcement authority ("primacy") under these Acts and receive EPA 106 grant money to begin this process, the Tribe must demonstrate to EPA that it can capably manage and enforce a groundwater protection program; NOW THEREFORE,

BE IT RESOLVED by the Swinomish Indian Senate that the Tribe will document its authority and capability to assume "primacy" under these Acts in order to be eligible to receive EPA 106 grant funds to establish an Environmental Protection program on the Swinomish Indian Reservation.

Robert Joe, Sr.
Robert Joe, Sr., Chairman
Swinomish Indian Senate

C E R T I F I C A T I O N

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing resolution was approved at a Regular Meeting of the Swinomish Indian Senate held on June 6, 1989, at which time a quorum was present and the resolution was passed by a vote of 7 FOR, 0 AGAINST, and 0 ABSTENTIONS.

Chester Cayou, Sr.
Chester Cayou, Sr., Secretary
Swinomish Indian Senate

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Notice.

SUMMARY: Notice is hereby given that the annual update of the list of entities recognized and eligible for funding and services from the Bureau of Indian Affairs is published pursuant to 25 CFR Part 83.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs, Division of Tribal Government Services, 18th & C Streets NW., Washington, DC 20240, telephone number: (202) 343-7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary-Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Indian Tribal Entities* Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama and Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
Alturas Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California

* Includes within its meaning Indian tribes, bands, villages, communities and pueblos as well as Alaska Native entities.

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BRANCH OF TRIBAL OPERATIONS
BUREAU OF INDIAN AFFAIRS

- Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Indian Colony, Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of the Barona Reservation, California
Viejas Group of the Viejas Reservation, California
Cauya Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band Potawatomi Indian Tribe of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indian of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes of the Bands of the Yakima Indian Nation of the Yakima Reservation, Washington
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Covelo Indian Community of the Round Valley Reservation, California
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Creek Nation of Oklahoma
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of Smith River Tolowa Indians of California
Ely Indian Colony of Nevada
Enterprise Rancheria of Maidu Indian of California
Flandreau Santee Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
Gay Head Wampanoag Indians of Massachusetts
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Hannahville Indian Community of Wisconsin Potawatomi Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Tribe of the Hualapai Indian Reservation, California
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown Klamath Tribe of Washington
Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of the Karuk Reservation, Washington
Kashia Band of Pomo Indians of the Stewart Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialagee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma (includes Texas Band of Kickapoo Indians)
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota
Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

- Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
- Miami Tribe of Oklahoma
- Miccosukee Tribe of Indians of Florida
- Middletown Rancheria of Pomo Indians of California
- Minnesota Chippewa Tribe, Minnesota (Six component Reservations: Bois Forte Band (Nett Lake), Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lac Band, White Earth Band)
- Mississippi Band of Choctaw Indians, Mississippi
- Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
- Modoc Tribe of Oklahoma
- Mooretown Rancheria of Maidu Indians of California
- Moronogo Band of Cahuilla Mission Indians of the Morongo Reservation, California
- Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
- Narragansett Indian Tribe of Rhode Island
- Navajo Tribe of Arizona, New Mexico and Utah
- Nez Perce Tribe of Idaho
- Nisqually Indian Community of the Nisqually Reservation, Washington
- Nooksack Indian Tribe of Washington
- Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
- Northfork Rancheria of Mono Indians of California
- Northwestern Band of Shoshoni Indians of Utah (Washakie)
- Ogala Sioux Tribe of the Pine Ridge Reservation, South Dakota
- Omaha Tribe of Nebraska
- Oneida Nation of New York
- Oneida Tribe of Wisconsin
- Onondaga Nation of New York
- Osage Tribe of Oklahoma
- Ottawa Tribe of Oklahoma
- Otoe-Missouria Tribe of Oklahoma
- Paiute Indian Tribe of Utah
- Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
- Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
- Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
- Pala Band of Luiseno Mission Indians of the Pala Reservation, California
- Pascua Yaqui Tribe of Arizona
- Passamaquoddy Tribe of Maine
- Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
- Pawnee Indian Tribe of Oklahoma
- Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
- Penobscot Tribe of Maine
- Peoria Tribe of Oklahoma
- Picayune Rancheria of Chukchansi Indians of California
- Pinoleville Rancheria of Pomo Indians of California
- Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancheries & XL Ranch)
- Poarch Band of Creek Indians of Alabama
- Ponca Tribe of Indians of Oklahoma
- Port Gamble Indian Community of the Port Gamble Reservation, Washington
- Potter Valley Rancheria of Pomo Indians of California
- Prairie Band of Potawatomi Indians of Kansas
- Prairie Island Indian Community of Minnesota
- Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
- Pueblo of Acoma, New Mexico
- Pueblo of Cochiti, New Mexico
- Pueblo of Jemez, New Mexico
- Pueblo of Isleta, New Mexico
- Pueblo of Laguna, New Mexico
- Pueblo of Nambe, New Mexico
- Pueblo of Picuris, New Mexico
- Pueblo of Pojoaque, New Mexico
- Pueblo of San Felipe, New Mexico
- Pueblo of San Juan, New Mexico
- Pueblo of San Ildefonso, New Mexico
- Pueblo of Sandia, New Mexico
- Pueblo of Santa Ana, New Mexico
- Pueblo of Santa Clara, New Mexico
- Pueblo of Santo Domingo, New Mexico
- Pueblo of Taos, New Mexico
- Pueblo of Tesuque, New Mexico
- Pueblo of Zia, New Mexico
- Puyallup Tribe of the Puyallup Reservation, Washington
- Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
- Quapaw Tribe of Oklahoma
- Quartz Valley Rancheria of Karok, Shasta & Upper Klamath Indians of California
- Quechan Tribe of the Fort Yuma Indian Reservation, California
- Quileute Tribe of the Quileute Reservation, Washington
- Quinault Tribe of the Quinault Reservation, Washington
- Ramona Band or Village of Cahuilla Mission Indians of California
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
- Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
- Redding Rancheria of Pomo Indians of California
- Redwood Valley Rancheria of Pomo Indians of California
- Reno-Sparks Indian Colony, Nevada
- Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
- Robinson Rancheria of Pomo Indians of California
- Rohnerville Rancheria of Bear River or Mattole Indians of California
- Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
- Rumsey Indian Rancheria of Wintun Indians of California
- Sac & Fox Tribe of the Mississippi in Iowa
- Sac & Fox Tribe of Missouri in Kansas and Nebraska
- Sac & Fox Tribe of Oklahoma
- Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
- Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
- San Carlos Apache Tribe of the San Carlos Reservation, Arizona
- San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California
- San Pasqual Band of Diegueno Mission Indians of California
- Santa Rosa Indian Community of the Santa Rosa Rancheria, California
- Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
- Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
- Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
- Santee Sioux Tribe of the Santee Reservation of Nebraska
- Sauk-Suiattle Indian Tribe of Washington
- Sault Ste. Marie Tribe of Chippewa Indians of Michigan
- Seminole Nation of Oklahoma
- Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
- Seneca Nation of New York
- Seneca-Cayuga Tribe of Oklahoma
- Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
- Sheep Ranch Rancheria of Me-Wuk Indians of California
- Sherwood Valley Rancheria of Pomo Indians of California
- Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
- Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
- Shoshone Tribe of the Wind River Reservation, Wyoming
- Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
- Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
- Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
- Skokomish Indian Tribe of the Skokomish Reservation, Washington
- Skull Valley Band of Goshute Indians of Utah
- Smith River Rancheria of California
- Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
- Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
- Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
- Spokane Tribe of the Spokane Reservation, Washington
- Squaxin Island Tribe of the Squaxin Island Reservation, Washington
- St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
- St. Regis Band of Mohawk Indians of New York
- Standing Rock Sioux Tribe of North & South Dakota
- Stockbridge-Munsee Community of Mohican Indians of Wisconsin
- Stillaguamish Tribe of Washington
- Summit Lake Paiute Tribe of Nevada
- Suquamish Indian Tribe of the Port Madison Reservation, Washington
- Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
- Swinomish Indians of the Swinomish Reservation, Washington
- Sycuan Band of Diegueno Mission Indians of California
- Table Bluff Rancheria of Wiyot Indians of California
- Table Mountain Rancheria of California
- Te-Moak Tribe of Western Shoshone Indians of Nevada
- Thlopthlocco Tribal Town of the Creek Nation of Oklahoma

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
 Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
 Tonawanda Band of Seneca Indians of New York
 Tonkawa Tribe of Indians of Oklahoma
 Tonto Apache Tribe of Arizona
 Torres-Martinez Band of Cahuilla Mission Indians of California
 Tule River Indian Tribe of the Tule River Reservation, California
 Tulalip Tribes of the Tulalip Reservation, Washington
 Tunica-Biloxi Indian Tribe of Louisiana
 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
 Turtle Mountain Band of Chippewa Indians of North Dakota
 Tuscarora Nation of New York
 Twenty-Nine Palms Band of Luiseno Mission Indians of California
 United Keetoowah Band of Cherokee Indians, Oklahoma
 Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
 Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
 Upper Skagit Indian Tribe of Washington
 Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
 Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
 Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
 Walker River Paiute Tribe of the Walker River Reservation, California
 Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
 White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
 Wichita Indian Tribe of Oklahoma
 Winnebago Tribe of Nebraska
 Winnemucca Indian Colony of Nevada
 Wisconsin Winnebago Indian Tribe of Wisconsin
 Wyandotte Tribe of Oklahoma
 Yankton Sioux Tribe of South Dakota
 Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
 Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
 Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
 Yomba Shoshone Tribe of the Yomba Reservation, Nevada
 Ysleta Del Sur Pueblo of Texas
 Yurok Tribe of the Hoopa Valley Reservation, California
 Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

The following are those Alaska entities which are recognized and eligible to receive funding and services from the Bureau of Indian Affairs. The purpose of this updated list is: (1) To comply with the regulatory requirement

of annual publication pursuant to 25 CFR Part 83, (2) to reflect the Alaska entities which are statutorily eligible for funding and services from the Bureau of Indian Affairs, (3) to make it easier for previously unlisted, but statutorily eligible, entities to receive funding and services, and in so doing, (4) to describe the criteria used for inclusion on the list and for making additions.

All of the entities previously listed in the 1986 Federal Register publication are included in this list. However, the number of entities listed on the Alaska Native Entities section is approximately doubled on the basis of express Congressional recognition of the types of entities in Alaska eligible to receive funding or services from the Bureau of Indian Affairs. The additional entities are included without the necessity of completing the Federal Acknowledgment Process because of more explicit statutory provisions on groups eligible to receive funding and services on behalf of Alaska Natives.

The Federal Acknowledgment Procedures contained in 25 CFR Part 83 set forth a procedure whereby Indian groups may document their existence as tribes with a special relationship to the United States such as to qualify for funding and services as an "Indian tribe, organized band, pueblo or community." Section 83.6(b) requires that the Secretary publish a list of Indian tribes already recognized and receiving funding and services from the Department, groups to which the Federal Acknowledgment Procedures accordingly do not apply. This list is published pursuant to § 83.6(b).

The Department first published a list of Indian Tribal Entities on February 6, 1979, with the notation that "[t]he list of eligible Alaskan entities will be published at a later date." Subsequently, the Department published an updated list on November 24, 1982, to which it appended a list of "Alaska Native Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs." The preamble which described the scope and purpose of the Alaska list stated "[w]hile eligibility for services administered by the Bureau of Indian Affairs is generally limited to historical tribes and communities of Indians residing on reservations, and their members, unique circumstances have made eligible additional entities in Alaska which are not historical tribes. Such circumstances have resulted in multiple, overlapping eligibility of Native entities in Alaska. To alleviate any confusion which might arise from publication of a multiple eligibility listing, the following preliminary list shows those entities to

which the Bureau of Indian Affairs gives priority for purposes of funding and services." 47 FR 53133-53134 (1982). This preamble was inadvertently dropped from the subsequent lists.

A number of Alaska Native Entities have complained to the Department that they were omitted from previous lists despite the fact that they are receiving funding and services from the Bureau of Indian Affairs and qualify for such under the statutes that have established the programs of the Bureau. Some do not believe they should have to submit all of the documentation required of an Indian tribe under Part 83 to continue to receive benefits previously provided. Other departments have also made inquiry about the eligibility for their programs of entities included on or omitted from the 1982 Alaska Native Entities List. In addition, there has been confusion on whether inclusion on or exclusion from the Alaska Native Entities List constitutes an official determination of the United States government as to the governmental powers of particular Alaska villages or entities over non-members or territory.

The Department agrees that Alaska Native entities which satisfy the criteria listed below, and therefore are specifically eligible for the funding and services of the Bureau by statute, should not have to undertake to obtain Federal Acknowledgment pursuant to Part 83. We agree they should be included in the publication required by § 83.6(b) without further review.

However, inclusion on a list of entities already receiving and eligible for Bureau funding and services does not constitute a determination that the entity either would or would not qualify for Federal Acknowledgment under the regulations, but only that no such effort is necessary in order to preserve eligibility. Furthermore, inclusion on or exclusion from this list of any entity should not be construed to be a determination by this Department as to the extent of the powers and authority of that entity.

The principal demand by the Bureau and other federal agencies is for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning federal programs for Indians. General federal Indian statutes provide that the Bureau serve tribes which are usually defined as "any Indian Tribe, band, nation, rancheria, pueblo, colony or community." With respect to Alaska, Congress has provided additional guidance as to whom we should provide services. The 1936 amendments to the Indian Reorganization Act, applicable

only to Alaska, authorized groups to organize as tribes which are not historical tribes and are not residing on reservations. They include groups having a "common bond of occupation or association, or residence within a well-defined neighborhood, community, or rural district." 25 U.S.C. § 473a. More recently, Indian statutes, such as the Indian Self-Determination Act,¹ specifically include Alaska Native villages, village corporations and regional corporations defined or established under the Alaska Native Claims Settlement Act (ANCSA).

Therefore, this list includes all of the Alaska entities meeting any of the following criteria which are used in one or more Federal statutes for the benefit of Alaska Natives:

1. "Tribes" as defined or established under the Indian Reorganization Act as supplemented by the Alaska Native Act.

2. Alaska Native Villages defined in or established pursuant to the Alaska Native Claims Settlement Act (ANCSA).²

3. Village corporations defined in or established pursuant to ANCSA.

4. Regional corporations defined in or established pursuant to ANCSA.

5. Urban corporations defined in or established pursuant to ANCSA.

6. Alaska Native groups defined in or established pursuant to ANCSA.

7. Alaska Native group corporations defined in or established pursuant to ANCSA.

8. Alaska Native entities that receive assistance from the Bureau in matters relating to the settlement of claims against the United States government, such as in the Act of June 19, 1935, Pub. L. 74-152, as amended by the Act of August 19, 1965, Pub. L. 89-130 and

9. Tribes which have petitioned to be acknowledged and have been determined to exist as tribes pursuant to 25 CFR Part 83.

Any Alaska village or entity not listed herein may still seek to obtain Federal Acknowledgment by following the procedures in 25 CFR Part 83 or may be

added to the list by demonstrating that they meet one of the nine criteria above.

We are concerned, however, that applying the criteria presently contained in Part 83 to Alaska may be unduly burdensome for the many small Alaska organizations. Alaska, with small pockets of Natives living in isolated locations scattered throughout the state, may not have extensive documentation on its history during the 1800's and early 1900's much less the even earlier periods commonly researched for groups in the lower-48. While it is fair to require groups in the lower-48 states to produce such documentation because they are located in areas where no group could exist without being the subject of detailed written records, insistence on the same formality for those Alaska groups might penalize them simply for being located in an area that was, until recently, extremely isolated. Consequently, the Bureau, in consultation with Indians and Alaska Natives, will review the present acknowledgment process to determine if a modified process is needed so that Alaska organizations may seek inclusion on the list of entities recognized and eligible for services without using the present procedure which may be unduly burdensome.

Other Federal agencies should be aware that some statutes authorize the government to serve other organizations which are not listed while others specify only some of the criteria listed above. Therefore, each agency must look at its particular statutory authorities to make a final eligibility determination.

Afognak
Ahkiok-Kaguyak Native Corp.
AHTNA, Inc. (Cantwell, Chistochina, Copper Center, Gakona, Gulkana, Mentasta & Tazlina)

AHTNA, Incorporated

Akhiok

Akiachak, Ltd.

Akiachak

Akiachak, Akiachak Native Community

Akiak

Akiak Native Community

Akutan Corp.

Akutan

Alakanuk Native Corp.

Alakanuk

Alaska Peninsula Corporation (Kokhanok, Newhalen, Port Heiden, South Naknek & Ugashik)

Alatna

Aleknagik (aka Aleknagik)

Aleknagik Natives, Ltd.

Aleut Corporation

Alexander Creek

Alexander Creek, Inc.

Allakaket

Amblor

Anaktuvuk Pass

Andreafey

Angoon Community Association

Angoon

Aniak

Anton Larsen, Inc.

Anvik

Arctic Village

Arctic Slope Regional Corporation

ARVIQ, Inc. (Platinum)

Askinuk Corp. (Scammon Bay)

Atka

Atka, Native Village of Atka

Atkasook Corp.

Atkasook

Atmauthluak, Ltd.

Atmauthluak

Atxam Corp. (Atka)

Ayakulik

Ayakulik, Inc.

Azachorok, Inc. (Mountain Village)

Baan-o-yeel kon Corp. (Rampart)

Barrow

Bay View, Inc. (Ivanof Bay)

Bean Ridge Corp. (Manley Hot Springs)

Beaver Kwit'chin Corp.

Beaver

Becharof Corp. (Egegik)

Belkofski Corp.

Belkofsky (aka Belkofski)

Bells Flats Natives, Inc.

Bells Flats

Bering Straits Native Corporation

Bethel (aka Orutsararmiut)

Bethel Native Corp.

Bill Moore's (aka Bill Moore's Slough)

Birch Creek

Brevig Mission Native Corp.

Brevig Mission

Bristol Bay Native Corporation

Buckland, Native Village of Buckland

Buckland

Calista Corporation

Candle

Cantwell

Canyon Village

Cape Fox Corporation (Saxman)

Caswell Native Association

Caswell

Central Council of Tlingit and Haida Indian Tribes of Alaska

Chalkyitsik

Chalkyitsik Native Corp.

Chaloonawick

Chaluka Corp. (Nikolski)

Chanega, Native Village of Chanega

Chanilut

Chefarmute, Inc. (Chefornak)

Chenega Corporation

Chefornak

Chevak

Chevak Company Corp.

Chickaloon

Chickaloon Moose Creek Native Association, Inc.

Chignik Lagoon Native Corp.

Chignik

Chignik Lake

Chignik Lagoon

Chignik River, Limited (Chignik Lake)

Chilkat Indian Village of Klukwan

Chilkoot Indian Association of Haines

Chistochina

Chitina

Chitina Native Corp.

Choggiung, Ltd. (Dillingham, Ekuk, Portage Creek)

Chuathbaluk

¹ For purposes of the Indian Self-Determination Act, Indian tribe is defined to include "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. . . . This definition includes criteria 1, 2, 3, 4 and 9."

² ANCSA defines a Native village as: "any tribe, band, clan, group, village, community or association in Alaska listed in [43 U.S.C. 1610 or 1615], or which meets the requirements of this chapter, and which the Secretary determines was composed of twenty-five or more Natives." 43 U.S.C. 1602(c).

Chugach Alaska Corporation
 Chulounawick Corporation
 Circle
 Clark's Point
 Cook Inlet Region, Inc.
 Copper Center
 Council
 Council Native Corporation
 Craig
 Craig Community Association
 Crooked Creek
 Cully Corp. (Point Lay)
 Danzhit Hanlani Corporation (Circle)
 Deering, Native Village of Deering
 Deering
 Deloycheet, Inc. (Holy Cross)
 Dillingham
 Dineega Corporation (Ruby)
 Dinyee Corporation (Stevens)
 Diomede, Native Village of Diomede (aka Inalik)
 Diomede Native Corporation
 Dot Lake
 Dot Lake Native Corporation
 Douglas Indian Association
 Doyon, Limited
 Eagle
 Eek
 Egegik
 Eklutna, Inc.
 Eklutna
 Eku
 Ekwok
 Ekwok Natives, Ltd.
 Elim Native Corporation
 Elim
 Elim, Native Village of Elim
 Emmonak Corporation
 Emmonak
 English Bay
 English Bay Corporation
 Evanville
 Evanville, Inc.
 Eyak Corporation
 Eyak
 False Pass
 Far West, Inc. (Chignik)
 Fort Yukon, Native Village of Fort Yukon
 Fort Yukon
 Gakona
 Galena
 Gambell
 Gambell, Native Village of Gambell
 Gana-Yoo, Limited (Galena, Kaltag, Koyukuk & Nulato)
 Georgetown
 Gold Creek-Susitna
 Gold Creek-Susitna, Inc.
 Goldbelt, Inc. (Juneau)
 Golovin Native Corporation
 Golovin
 Goodnews Bay
 Grayling
 Grayling, Organized Village of Grayling (aka Holikachuk)
 Gulkana
 Gwitchyaa Zhee Corporation (Fort Yukon)
 Haida Corporation (Hydaburg)
 Hamilton
 Healy Lake
 Hee-yea-lindge Corporation (Grayling)
 Holy Cross
 Hoonah Indian Association
 Hooper Bay
 Hughes
 Huna Totem (Hoonah)

Hungwitschin Corporation (Eagle)
 Huslia
 Hydaburg
 Hydaburg Cooperative Association
 Igiugig Native Corporation
 Igiugig
 Iliamna Natives, Ltd.
 Iliamna
 Inalik (aka Diomede)
 Ingalik, Inc. (Anvik)
 Inupiat Community of the Arctic Slope
 Iqijouaq Company (Eek)
 Isanotaki Corporation (False Pass)
 Ivanof Bay
 K'oyitl'ots'ina, Ltd. (Alatna, Allakaket, Hughes & Huslia)
 Kaguyak
 Kake, Organized Village of Kake
 Kake Tribal Corporation
 Kake
 Kaktovik Inupiat Corporation
 Kaktovik
 Kalskag
 Kaltag
 Kanatak, Native Village of Kanatak
 Karluk, Native Village of Karluk
 Karluk
 Kasaan, Organized Village of Kasaan
 Kasaan
 Kasigluk, Inc.
 Kasigluk
 Kavalco, Inc. (Kasaan)
 Kenai Native Association, Inc.
 Kenaitze Indian Tribe
 Ketchikan Indian Corporation
 Kiana
 KianTree (Canyon Village)
 Kijik Corporation (Nondalton)
 Kikiktagruk Inupiat Corporation (Kotzebue)
 King Island Native Community
 King Island Native Corporation
 King Cove
 King Cove Corporation
 Kipnuk
 Kiutsarak, Inc. (Goodnews Bay)
 Kivalina, Native Village of Kivalina
 Kivalina
 Klawock Cooperative Association
 Klawock
 Klawock Heenya
 Klukwan, Inc.
 Knik
 Knikatnu, Inc. (Knik)
 Kobuk
 Kokarmiut Corporation (Akiak)
 Kokhanok
 Koliganek
 Koliganek Natives, Ltd.
 Kongiganak
 Kongnikilnomiut Yuita Corporation (Bill Moore's)
 Koniag, Incorporated
 Koniag, Inc. (Karluk & Larsen Bay)
 Kootznoowo, Inc. (Angoon)
 Kotlik Yupik Corporation
 Kotlik
 Kotzebue
 Kotzebue, Native Village of Kotzebue
 Koyuk
 Koyuk Native Corporation
 Koyuk, Native Village of Koyuk
 Koyukuk
 Kugkaktlik, Ltd. (Kipnuk)
 Kuskokwim Native Corporation (Aniak, Chuathbaluk, Crooked Creek, Georgetown, Lower Kalska, Red Devil, Napaimute, Sleetmute, Stony River, Upper Kalskag)

Kuugpiik Corporation (Nooiksut)
 Kwethluk, Organized Village of Kwethluk
 Kwethluk, Incorporated
 Kwethluk
 Kwigillingok, Native Village of Kwigillingok
 Kwigillingok
 Kwik, Inc. (Kwigillingok)
 Kwinhagak, Native Village of Kwinhagak (aka Quinhagak)
 Larsen Bay
 Leisnoi, Inc. (Woody Island)
 Levelock, Natives, Ltd.
 Levelock
 Lime Village
 Lime Village Company
 Litnik
 Litnik, Inc.
 Lower Kalskag
 Manley Hot Springs
 Manokotak Natives, Ltd.
 Manokotak
 Marshall
 Mary's Igloo
 Mary's Igloo Native Corporation
 Maserculiq, Inc. (Marshall)
 McGrath
 Mekoryuk, Native Village of Mekoryuk, Island of Nunivak
 Mekoryuk
 Mendas Chaag Native Corporation (Healy Lake)
 Mentasta Lake
 Metlakatla Indian Community, Annette Island Reserve
 Minto
 Minto, Native Village of Minto
 Montana Creek Native Association
 Montana Creek
 Mountain Village
 MTNT, Ltd. (McGrath, Nikolai, Takotna & Telida)
 Nagamut
 Nagamut
 Naknek
 NANA Regional Corporation (Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Noatak, Noorvik, Selawik, & Shungnak)
 Napaimute
 Napakiak Corporation
 Napakiak Native Village of Napakiak
 Napakiak
 Napakiak
 Napakiak Corporation
 Natives of Kodiak
 Natives of Afognak, Inc. (Afognak & Port Lions)
 Neets'ai Corporation (Arctic Village)
 Nelson Lagoon
 Nelson Lagoon Corporation
 Nenana
 Nerklilmute Native Corporation (Andreafski)
 New Stuyahok
 Newhalen
 Newtok
 Newtok Corporation
 NGTA, Inc. (Nightmute)
 Nightmute
 Nikolai
 Nikolski
 Nikolski, Native Village of Nikolski
 Nima Corporation (Mekoryuk)
 Ninilchik
 Ninilchik Native Association
 Noatak
 Noatak, Native Village of Noatak

Nome Eskimo Community
 Nome (aka Nome Eskimo)
 Nondalton
 Nooikaut (aka Nuiqsut)
 Noorvik Native Community
 Noorvik
 Northway
 Northway Natives, Inc.
 Nulato
 Nunakauiak Yupik Corporation (Tooksok Bay)
 Nunamiut Corporation (Anaktuvuk Pass)
 Nunapiglluraq Corporation (Hamilton)
 Nunapitchuk
 Nunapitchuk, Ltd.
 Nunapitchuk, Native Village of Nunapitchuk
 Oceanside Corporation (Perryville)
 OHOG, Inc. (Ohogamiut)
 Ohogamiut
 Old Harbor
 Old Harbor Native Corporation
 Olgoonik Corporation (Wainwright)
 Olsonville
 Olsonville
 Oscarville
 Oscarville Native Corporation
 Ounalashka Corporation (Unalaska)
 Ouzinkie Native Corporation
 Ouzinkie
 Paimiut Corporation
 Paimiut
 Paug-vik, Incorporated, Ltd. (Naknek)
 Pauloff Harbor
 Pedro Bay
 Pedro Bay Native Corporation
 Perryville
 Perryville, Native Village of Perryville
 Petersburg Indian Association
 Pilot Point
 Pilot Station
 Pilot Point Native Corporation
 Pilot Station, Inc.
 Pitka's Point
 Pitka's Point Native Corporation
 Platinum
 Point Hope
 Point Lay
 Point Hope, Native Village of Point Hope
 Point Possession, Inc.
 Point Lay, Native Village of Point Lay
 Point Possession
 Port Heiden (Meshick)
 Port Lions
 Port Graham
 Port Alsworth
 Port Graham Corporation
 Port Williams (Shuyak)
 Portage Creek (Ohgsenakale)
 Pribilof Aleut Communities of St. Paul & St. George Islands
 Qanirtuuq, Inc. (Quinhagak aka Kwinhagak)
 Qemirtalek Coast Corporation (Kongiganak)
 Quinhagak (aka Kwinhagak)
 Rampart
 Red Devil
 Ruby
 Russian Mission or Chauthalue (Kuskokwim)
 Russian Mission (Yukon)
 Russian Mission Native Corporation
 Saguyak, Inc. (Clark's Point)
 Salamatof Native Association, Inc.
 Salamatof
 Sanak Corporation (Pauloff Harbor)
 Sand Point
 Savoonga
 Savoonga Native Corporation
 Savoonga, Native Village of Savoonga
 Saxman, Organized Village of Saxman
 Saxman
 Scammon Bay
 Sea Lion Corporation (Hooper Bay)
 Sealaska Corporation
 Selawik
 Selawik, Native Village of Selawik
 Seldovia Native Association, Inc.
 Seldovia
 Seth-de-ya-ah Corporation (Minto)
 Shean-Seet, Inc. (Craig)
 Shageluk Native Village
 Shageluk
 Shaktoolik, Native Village of Shaktoolik
 Shaktoolik Native Corporation
 Shaktoolik
 Shee Atika, Inc. (Sitka)
 Sheldon's Point
 Shishmaref, Native Village of Shishmaref
 Shishmaref
 Shishmaref Native Corporation
 Shumagin Corporation (Sand Point)
 Shungnak
 Shungnak, Native Village of Shungnak
 Shuyak, Inc. (Port Williams)
 Sitka Community Association
 Sitnasuak Native Corporation (Nome)
 Sleetmute
 Solomon Native Corporation
 Solomon
 South Naknek
 St. George Tanaq Corporation
 St. Mary's Native Corporation
 St. Michael, Native Village of St. Michael
 St. Michael Native Corporation
 St. George
 St. Mary's (aka Algaaciq)
 St. Michael
 St. Paul
 Stebbins Native Corporation
 Stebbins Community Association
 Stebbins
 Stevens Village
 Stevens, Native Village of Stevens
 Stony River
 Stuyahok, Ltd. (New Stuyahok)
 Swan Lake Corporation (Sheldon's Point)
 Takotna
 Tanacross, Inc.
 Tanacross
 Tanacross, Native Village of Tanacross
 Tanadgusix Corporation (St. Paul)
 Tanalian, Inc. (Port Alsworth)
 Tanana
 Tanana, Native Village of Tanana
 Tatitlek
 Tatitlek Corporation
 Tatitlek, Native Village of Tatitlek
 Tazlina
 Telida
 Teller
 Teller Native Corporation
 Tetlin
 Tetlin, Native Village of Tetlin
 Tetlin Native Corporation
 Thirteenth Regional Corporation
 Tigara Corporation (Point Hope)
 Tihiteet'Aii, Inc. (Birch Creek)
 Toghotele Corporation (Nenana)
 Togiak Natives, Ltd.
 Togiak
 Toksook Bay
 Tozitna, Ltd. (Tanana)
 Tulkisarmute, Inc. (Tuluksak)
 Tuluksak Native Community
 Tuluksak
 Tuntutuliak
 Tuntutuliak Land, Ltd.
 Tununak
 Tununak, Native Village of Tununak
 Tununmiut Rinit Corporation (Tununak)
 Twin Hills
 Twin Hills Native Corporation
 Tyonek, Native Village of Tyonek
 Tyonek
 Tyonek Native Corporation
 Uganik Natives, Inc.
 Uganik
 Ugashik
 Ukpeagvik Inupiat Corporation (Barrow)
 Umkumiut, Ltd.
 Umkumiut
 Unalakleet
 Unalakleet, Native Village of Unalakleet
 Unalakleet Native Corporation
 Unalaska
 Unga
 Unga Corporation
 Upper Kalskag
 Uyak
 Uyak Natives, Inc.
 Venetie, Native Village of Venetie
 Venetie
 Wainwright
 Wales Native Corporation
 Wales
 Wales, Native Village of Wales
 White Mountain, Native Village of White Mountain
 White Mountain Native Corporation
 White Mountain
 Woody Island
 Wrangell Cooperative Association
 Yak-tat Kwaan, Inc. (Yakutat)
 Yakutat
 Zho-Tse, Inc. (Shageluk)
 Ross O. Swimmer,
Assistant Secretary, Indian Affairs.
 [FR Doc. 88-29990 Filed 12-29-88; 8:45 am]
 BILLING CODE 4310-02-01

CONSTITUTION AND BYLAWS
for the
SWINOMISH INDIANS
of the
SWINOMISH RESERVATION
As Amended

We, the Indians of the Swinomish Reservation, in order to establish a more perfect tribal organization, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of home rule, in accordance with and by the authority of the act of Congress of June 18, 1934, do ordain and establish this constitution for the Swinomish Indians.

ARTICLE I - NAME AND TERRITORY

SECTION 1. The name of this organized body shall be the Swinomish Indian Tribal Community, hereinafter called the community.

SECTION 2. The jurisdiction of the Swinomish Indians shall include all the territory within the original confines of the Swinomish Reservation boundaries, as set forth by Executive order of September 9, 1873, in pursuance of article III of the Treaty of Point Elliott, January 22, 1855 (12 Stat. 928), and shall extend to such other lands as may be hereafter added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Community shall consist of:

(a) All persons of Indian blood lawfully enrolled upon the Swinomish Indian Reservation and residing there June 1, 1935: Provided, that this section shall not affect the property rights under existing laws of the Indians of the Swinomish Reservation.

(b) All children born to any member of the community who is a resident of the reservation at the time of birth of said children.

SECTION 2. The governing body shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members, making any necessary adjustments of property rights.

ARTICLE III - GOVERNING BODY

SECTION 1. The governing body of the community shall consist of a council, known as the Swinomish Indian Senate.

SECTION 2. This senate shall consist of eleven (11) members duly elected to serve five (5) years, two being elected each year except in years ending in "0" or "5" when three shall be elected.

SECTION 3. The senate so organized shall elect from its own number: (1) a chairman; (2) a vice-chairman; and from within or without, (3) a secretary; (4) a treasurer: Provided, that the offices of secretary and treasurer may be combined; and may appoint or employ such other officers and committees as may be deemed necessary, such as supervisory commissioners, managers, etc., to be immediately responsible for each separate industry and activity, the direction and management of which are assumed by the senate, for example: health, welfare, education, fisheries, agriculture, land management, horticulture, oyster culture, construction, employees, law and order, finances, etc. (Leg. Hist.: Amendment No. 2 - 4/17/50)

SECTION 4. The first election of the senate hereunder shall be called and supervised by the present tribal council at least thirty (30) days after the ratification and approval of this constitution. The three (3) candidates receiving the highest number of votes shall hold office for five (5) years, and the two next highest four (4) years, and the two next highest three (3) years; the two next highest, two (2) years; the two next highest, one (1) year; and they shall hold office until their successors are duly elected and qualified. After the first election, (60) days prior to the expiration of the terms of the office of its members.

ARTICLE IV - ELECTION AND NOMINATION FOR THE SENATE

SECTION 1. All members of the community who are twenty-one years of age or older and who have lived on the reservation, or within fifteen (15) miles of the reservation boundary, for a period of one (1) year immediately prior to any election, shall have the right to vote. (Leg. Hist.: Amendment No. 3 - 4/27/66 and Amendment No. 14 - 10/22/85)

SECTION 2. The time and places of voting shall be designated by the senate.

SECTION 3. All elections shall be by secret ballot.

SECTION 4. Nomination of candidates for the senate under this

constitution shall be by petition signed by not less than five (5) legal voters. A voter may sign only one petition for each office to be filled. Petitions for nominations shall be filed with the secretary of the senate at least thirty (30) days prior to the election for which the candidate makes such petition. The secretary shall determine the legality of the petitions and the eligibility of the candidates. The secretary's decision may be appealed to the senate, whose ruling shall be final. The list of the qualified candidates shall be posted by the secretary of the senate in a public place not less than two (2) weeks prior to the election. (Leg. Hist.: Amendment No. 3 - 4/27/66)

SECTION 5. All elections shall be held in accordance with the rules and regulations laid down by the senate.

ARTICLE V - VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a member of the senate or official shall die, resign, or cease to live on the reservation or within fifteen (15) miles of the reservation boundary, or shall be found guilty in any Indian, States or Federal court, the senate shall declare the position vacant and elect to fill the unexpired term. (Leg. Hist.: Amendment No. 4 - 4/27/66)

SECTION 2. The senate may by a two-thirds affirmative vote expel any member for neglect of duty or gross misconduct. Before any vote on expulsion is taken on the matter, such member shall be given an opportunity to answer any and all charges at a designated senate meeting; and the decision of the senate shall be final.

ARTICLE VI - POWERS OF THE SENATE

SECTION 1. Enumerated Powers - The senate of the Swinomish Indian Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws:

X (a) To negotiate with the Federal, State, and local Governments on behalf of the tribe and to advise and consult with the representatives of the Department of the Interior on all activities of the Department that may affect the Swinomish Reservation.

(b) To employ legal counsel for the protection and advancement of the rights of the Swinomish Indians, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior. (Leg. Hist.: Amendment No. 5-

4/27/66)

(c) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interest in lands or other tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other official or agency of government, provided that no tribal lands shall ever be sold, encumbered, or leased for a period exceeding that permitted by law. (Leg. Hist.: Amendment No. 1 - 12/14/49)

(d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Swinomish Reservation prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(e) To make assignments of reservation land to members of the Swinomish Reservation in conformity with article VIII of this constitution.

(f) To manage all economic affairs and enterprises of the Swinomish Reservation in accordance with the terms of the charter to be issued to the Swinomish Indians by the Secretary of the Interior.

(g) To appropriate for salaries of tribal officials or for public purposes of the reservation any available tribal funds, provided that any such appropriation made prior to July 1, 1940, shall be subject to review by the Secretary of the Interior.

X (h) To levy taxes upon members of the community and to require the performance of community labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon non-members doing business within the reservation.

(i) To exclude from the restricted lands of the Swinomish Reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.

(j) To enact resolutions or ordinances not inconsistent with article II of this constitution governing the adoption and abandonment of membership, and to keep at all times a correct roll of the members of the Swinomish Community.

X (k) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Swinomish Reservation, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers. (Leg. Hist.: Amendment No. 15 - 10/22/85)

~~*~~ (l) To safeguard and promote the peace, safety, morals, and general welfare of the Swinomish Reservation by regulating the conduct of trade and the use and disposition of property within the reservation, provided that any ordinance directly affecting non-members of the reservation shall be subject to review by the Secretary of the Interior.

(m) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Swinomish Community.

(n) To regulate the inheritance of property, real and personal, other than allotted lands within the territory of the Swinomish Reservation, subject to review by the Secretary of the Interior.

(o) To regulate the domestic relations of members of the community subject to review by the Secretary of the Interior.

(p) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution, subject to review by the Secretary of the Interior.

(q) To cultivate and preserve native arts, crafts, culture, and Indian ceremonials.

(r) To adopt resolutions regulating the procedure of the senate itself, and of other tribal agencies and tribal officials of the reservation.

(s) To delegate to subordinate boards or to cooperative associations, which are open to all members of the community, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

SECTION 2. Manner of review. - Any resolution or ordinance which, by the terms of this constitution, is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the reservation who shall, within ten (10) days after its receipt, approve or disapprove the same. (Leg. Hist.: Amendment No. 5 - 4/27/66)

If the Superintendent shall approve any resolution or ordinance, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within ninety (90) days from the date of receipt, rescind the said resolution or ordinance for any cause, by notifying the senate of such decision.

If the Superintendent shall refuse to approve any resolution or ordinance within ten (10) days after its receipt by him, he shall advise the senate of his reasons therefor. If these reasons

appear to the senate insufficient, it may by a majority vote, refer the resolution or ordinance to the Secretary of the Interior who may, within ninety (90) days from the date of its receipt, approve the same in writing whereupon the said resolution or ordinance shall become effective.

SECTION 3. Future Powers. - The Senate of the Swinomish Reservation may exercise such further powers as may in the future be delegated to it by the Secretary of the Interior, or by any other duly authorized official or agency of government.

SECTION 4. Reserved Powers. - Any rights and powers heretofore vested in the tribes or bands of the Swinomish Reservation, but not expressly referred to in this constitution, shall not be abridged by this article, but may be exercised by the people of the Swinomish Reservation through the adoption of appropriate by-laws and constitutional amendments.

SECTION 5. Additional Powers. The Senate of the Swinomish Indian Reservation shall exercise the following rights and powers heretofore vested in the Tribes or Bands of the Swinomish Reservation in addition to all powers already conferred or guaranteed by the Constitution and Bylaws of the Community:

(a) **Zoning Power.** To regulate the land use of all property within the Swinomish Reservation. (Leg. Hist.: Amendment No. 15 - 10/22/85)

ARTICLE VII - BILL OF RIGHTS

SECTION 1. Suffrage. - All members of the community over the age of twenty-one (21) years shall have the right to vote in all tribal community elections. The residence qualifications established by article IV of this constitution shall apply to all elections except elections for the amendment of this constitution and the attached bylaws.

SECTION 2. Economic Rights. - All members of the community shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

SECTION 3. Civil Liberties. - All members of the community may enjoy without hindrance, freedom of worship, conscience, speech, press, assembly, and association.

SECTION 4. Rights of Accused. - Any members of the community who shall be accused of any offense shall have the right to a prompt open and public hearing, with due notice of the offense charge, and shall be permitted to summon witnesses in his own behalf. Trial by jury may be demanded by any prisoner accused of

any offense punishable by more than thirty days' imprisonment. Excessive bail shall not be required, and cruel punishment shall not be imposed.

ARTICLE VIII - LAND

SECTION 1. Allotted Lands. - Allotted lands, including heirship lands within the Swinomish Reservation, shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the State of Washington or of the Federal Government, or by the tribal community itself. It is further recognized that under existing law, such lands may be inherited by the heirs of the present owner, whether or not they are members of the community. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in the constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the community either in exchange for a money payment or in exchange for an hereinafter provided.

SECTION 2. Tribal Lands. - The unallotted lands of the Swinomish Reservation, and all lands which may hereafter be acquired by the community or by the United States in trust for the community, shall be held as tribal lands, and no part of such lands shall be mortgaged or sold, unless specifically authorized by law, and then only with the consent and approval of the Secretary of the Interior. Tribal lands shall not be allotted to individual Indians, but may be leased to members of the community, or otherwise used by the community. (Leg. Hist.: Amendment No. 6 - 4/27/66)

SECTION 3. Leasing of Community Lands. - Community lands may be leased by the senate, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law. (Leg. Hist.: Amendment No. 6 - 4/27/66)

SECTION 4. Assignments not to be granted. - There shall be no further assignments of any type granted by the community: Provided, that assignments heretofore granted and in effect shall continue in effect in accordance with the terms of said assignment and the provisions of the Constitution for the Swinomish Indians of the Swinomish Reservation in effect at the time said assignment was granted. (Leg. Hist.: Amendment No. 6-

4/27/66)

SECTION 5. Use of Community Land. - Community land, including any land under lease, shall be managed by the senate for the benefit of the entire community, and any income derived from such land shall accrue to the benefit of the community as a whole. (Leg. Hist.: Amendment No. 6 - 4/27/66)

SECTION 6. Acquisition of land by Community. - The community may acquire land, or interests in land, by purchase or otherwise, provided such acquisitions are in accordance with law. (Leg. Hist.: Amendment No. 6 - 4/27/66)

ARTICLE IX - AMENDMENTS

Amendments to the constitution and by-laws may be ratified and approved in the same manner as this constitution and by-laws.

Whenever five members of the senate shall consider an amendment necessary, such amendment shall be duly approved by five or more members of the senate and sent to the Secretary of the Interior. It shall then be the duty of the Secretary of the Interior to call an election. If at such election the amendment is adopted by a majority of the qualified voters of the tribe voting therein and if at least thirty percent of those entitled to vote shall vote in such election, such amendment shall be submitted to the Secretary of the Interior and, if approved by him, shall thereupon take effect.

BY-LAWS FOR THE SWINOMISH INDIANS OF THE SWINOMISH
RESERVATION OF WASHINGTON

ARTICLE I - DUTIES OF OFFICERS

SECTION 1. CHAIRMAN OF THE SENATE - The chairman of the senate - shall preside over all meetings of the senate and of the general council, shall perform all duties of a chairman, and exercise any authority delegated to him by the senate. He shall vote only in the case of a tie.

SECTION 2. VICE CHAIRMAN OF THE SENATE - The vice-chairman shall assist the chairman when called upon so to do, and in the absence of the chairman he shall preside. When so presiding, he shall have all the rights, privileges, and duties as well as the responsibilities of the chairman.

SECTION 3. SECRETARY OF THE SENATE - The secretary of the senate shall conduct all community correspondence and shall keep an accurate record of all matters transacted at senate meetings. It shall be his duty to submit promptly to the superintendent of the jurisdiction and Commissioner of Indian Affairs copies of all minutes of regular and special meetings of the senate. He shall be privileged to vote in the senate only in the event that he is an elected member thereof.

SECTION 4. TREASURER OF THE SENATE - The treasurer of the senate shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the senate, whether same be community funds or special funds for which the senate is acting as trustee or custodian. He shall deposit all such funds in such banks or elsewhere as directed by the senate, and shall make and preserve a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody, such report being made in writing to the senate at regular meetings and at such other times as requested by the senate.

He shall not pay out or otherwise disburse any funds in his possession or custody, or in the possession or custody of the senate, except when properly authorized so do by resolution duly passed by it.

The books and records of the treasurer shall be audited at least once each year by a competent auditor employed by the senate, and at such other times as the senate or the Commissioner of Indian Affairs may direct.

The treasurer shall be required to give a bond satisfactory to the senate and to the Commissioner of Indian Affairs.

The treasurer shall be present at all special or regular meetings of the senate, but shall be privileged to vote only in the event that he is an elected member of the senate.

SECTION 5. APPOINTIVE OFFICERS - The duties of all appointive committees or officers of the community shall be clearly defined by resolution of the senate at the time of their creation or appointment. Such committees and officers shall report, from time to time as required, to the senate, review by the senate upon the petition of any person aggrieved.

ARTICLE II - QUALIFICATIONS OF THE MEMBERS OF THE SENATE

No person shall be a candidate for membership in the senate unless he shall be member of the community, and shall have lived on the reservation, or within fifteen (15) miles of the reservation boundary, for a period of one (1) year next preceding the election, and shall be at least twenty-one preceding the election, and shall be at least twenty-one (21) years of age. (Leg. Hist.: Amendment No. 7 - 4/27/66; Amendment No. 10-10/22/85)

ARTICLE III - CERTIFICATION OF ELECTION

It shall be the duty of the members of the senate to certify the election of the duly elected members. This shall be done within thirty (30) days after the election and the certificate shall be filed with the secretary. (Leg. Hist.: Amendment No. 8-4/27/66)

ARTICLE IV - INSTALLATION OF SENATORS

Newly elected members who have been duly certified shall be installed at the first regular meeting of the senate following the election upon subscribing to the following oath, which shall be administered by any authorized person and filed with the secretary of the senate:

"I, _____, do hereby solemnly swear (or affirm) that I shall preserve, support, and protect the Constitution of the United States, and the constitution and by-laws of the Swinomish Indians to the best of my ability, so help me God."

ARTICLE V - TIME AND PLACE OF REGULAR MEETINGS AND PROCEDURE

SECTION 1. MEETINGS - Regular meetings of the senate shall be held on the first Tuesday of each month. The date of regular meetings may be changed by resolution of the senate. Meetings

shall be held at the business office or such other places as the senate may designate from time to time. Special meetings may be called by a written notice, signed by the chairman, or by a majority of the senate, and when so called the senate shall have power to transact business as in regular meetings. (Leg. Hist.: Amendment No. 9 - 5/31/66)

SECTION 2. ANNUAL ELECTION AND GENERAL COUNCIL - The annual election and general council meeting shall be held on the second Saturday in February of each year, or at such other time as the senate determines, at which time the chairman shall report in detail to the council what has been done during the past year and set forth plans of the senate for the coming year. This shall be freely discussed by the general council, and the wishes of the general council may be expressed by resolution which will govern the action of the senate. (Leg. Hist.: Amendment No. 13-10/22/85)

The chairman shall call special meetings of the general council at the direction of the senate or upon the written request of fifteen (15) voters.

SECTION 3. QUORUM - No business shall be transacted unless a quorum is present. A quorum shall consist of five (5) members of the senate. A quorum of the general council shall consist of twenty-five (25) voters at any meeting. (Leg. Hist.: Amendment No. 12 - 10/22/85)

SECTION 4. ORDER OF BUSINESS - The following order of business is established for all meetings:

- Call to order by the chairman
- Roll call
- Ascertainment of a quorum
- Reading the minutes of the last meeting
- Adoption of the minutes by vote or common consent
- Unfinished business
- Adjournment

SECTION 5. ORDINANCES AND RESOLUTIONS - All final decisions of the senate on matters of general and permanent interest to the members of the community shall be embodied in ordinances. Such ordinances shall be collected and published from time to time for the information and education of the members of the community.

All final decisions of the senate on matters of temporary interest (such as action on the reservation budget for a single year, or petitions to Congress or to the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoptions of members, instructions for community employees or rules of order for the senate) shall be

embodied in resolutions. Such resolutions shall be recorded in a special book which shall be open to public inspection.

All questions of procedure (such as acceptance of committee reports or invitations to outsiders to speak) shall be decided by motion duly passed, or by the ruling of the chairman if no objection is heard.

In all ordinances, resolutions or motions, the senate may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement, and parliamentary procedure shall otherwise be governed by Robert's Rules of Order.

SECTION 6. LEGISLATIVE FORMS - Every ordinance shall begin with the words: "Be it enacted by the Swinomish Indian Senate..."

Every ordinance or resolution shall contain a citation of the provisions of the Swinomish Constitution under which authority for said ordinance or resolution is found.

ARTICLE VI - CENTRAL GENERAL COUNCIL

SECTION 1. The senate shall have the power to select delegates to sit in a central general council of Northwest Indians.

ARTICLE VII - ADOPTION

This constitution and by-laws attached hereto shall be in full force and effect whenever a majority of the adult Indians residing on the Swinomish Reservation voting at an election called by the Secretary of the Interior in which at least thirty (30%) percent of the eligible voters shall vote, shall have ratified such constitution and by-laws, and the Secretary of the Interior shall have approved same, as provided in the act of June 18, 1934, as amended by the act of June 15, 1935.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved October 21, 1935, by the Secretary of the Interior, the attached constitution and by-laws was submitted for ratification to the Indians of the Swinomish Reservation and was on November 16, 1935, duly ratified by a vote 87 for, 1 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the act of June 15, 1935 (Pub. No. 147, 74th Cong.).

MARTIN J. SAMPSON,
Chairman of Election Board

GEORGE ALEXANDER,
Chairman of Swinomish Indian Senate

CLARA (WILBUR) JAMES,
Secretary

O.C. UPCHURCH,
Superintendent

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended do hereby approve the attached constitution and by-laws of the Indians of the Swinomish Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution or by-laws are hereby declared inapplicable to the Indians of the Swinomish Reservation.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

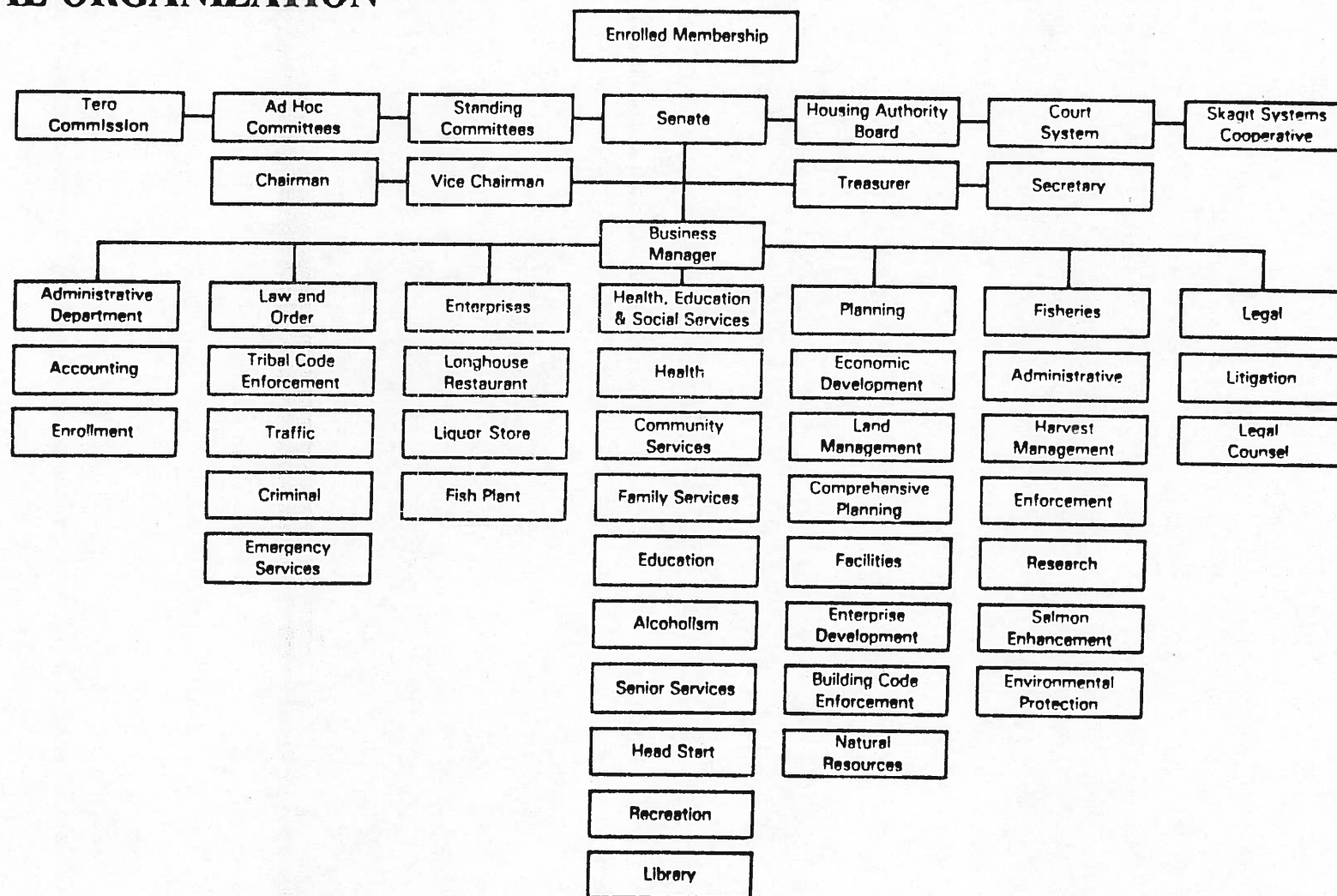
Approval recommended January 20, 1936.

WILLIAM ZIMMERMAN, Jr.
Assistant Commissioner of Indian Affairs.

CHARLES WEST,
Acting Secretary of the Interior.
(Seal)

Washington, D.C., January 27, 1936.

TRIBAL ORGANIZATION



SECTION 4.A

LEGAL ANALYSIS

OF

SWINOMISH TRIBAL AUTHORITY TO REGULATE

WATER RESOURCES

by
The Du Bey Law Firm

December 1987

LEGAL AUTHORITY OF THE SWINOMISH
TRIBAL COMMUNITY TO REGULATE THE ENVIRONMENT OF
THE SWINOMISH INDIAN RESERVATION

I. INTRODUCTION

As demonstrated by President Reagan's Indian Policy Statement of January 24, 1983, current Federal Indian Policy endorses the twin themes of Tribal self-government and economic self-sufficiency.^{1/} In furtherance of this policy, the United States Environmental Protection Agency ("EPA") in November, 1984, published its EPA Indian Policy acknowledging the primary role of Tribal governments in the implementation of Federal environmental law.

The EPA Indian Policy noted the absence of State jurisdiction on Indian lands, and directed the Agency to establish "government-to-government" relationships between EPA and Indian Tribal governments to implement and enforce the Federal environmental laws on Indian lands. The Swinomish Tribe is in the

1. President Reagan, Statement of Indian Policy, 19 Weekly Comp. Pres. Doc. 98 (January 24, 1983); See also, President Nixon, Statement of Indian Policy, 116 Cong. Rec. 23258 (1970). Information contained in this analysis relies in part on two recent papers prepared by the Du Bey Law Firm. The first is a paper submitted by Richard A. Du Bey, Grant D. Parker, and Mervyn L. Tano for publication to the University of Colorado Law Review entitled, "Protection of the Reservation Environment: Hazardous Waste Management on Indian Lands," and the second is a paper presented by Du Bey and Parker in March, 1987 to the Coastal Zone, '87 Symposium, sponsored by NOAA, the University of Washington, et al., and held in Seattle, Washington. This paper is entitled, "Protecting the Reservation Environment under the Coastal Zone Management Act." These papers are available from the Du Bey Law Firm.

process of developing such a relationship with EPA Region X.

In late 1985, EPA adopted its "Interim Strategy for Implementation of the EPA Indian Policy," which recognized that:

[F]orcing tribal governments to act through state governments that cannot exercise jurisdiction over them (Indian tribes) is not an effective way of implementing programs overall and certainly is in opposition to the federal policy of working with tribal governments directly. (Emphasis added).^{2/}

Thus, by developing its environmental management program, the Swinomish Tribe is on the one hand, protecting Tribal resources and on the other, furthering Tribal and Federal interests.

Implementation of the proposed Swinomish Water Quality Management Program ("SWQMP") is consistent with Tribal environmental policy. EPA support of the SWQMP is also consistent with the Agency's Federal trust obligation to the Swinomish Tribal Community. The exercise of Tribal self-government is further supported by President Reagan. In January 1983 the President stated that:

Tribal governments, like state and local governments, are more aware of the needs and desires of their citizens than is the Federal Government and should, therefore, have the primary responsibility for meeting those needs... Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of

2. Office of Federal Activities, Office of External Affairs, "Interim Strategy for the Implementation of the EPA Indian Policy" (November 1985).

self-government of Indian tribes without threatening termination. (Emphasis Added).^{3/}

II. THE STATUS OF INDIAN TRIBES

Federal law recognizes the unique status of Indian Tribes and Tribal lands. As early as 1832, the Supreme Court in a decision by Chief Justice Marshall, declared that Indian Tribes were:

[D]istinct political communities having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.^{4/}

Although the "conceptual clarity" of Marshall's view has given way to a particularized case by case analysis of treaties, statutes and executive orders, the special status of Indian tribes and Indian lands has endured.^{5/}

Tribal environmental programs, implemented as part of a tribe's civil regulatory authority, evidence the more recent effects of tribal government and protect the quality of the reservation environment. In 1981, the United States Court of Appeals for the Ninth Circuit found that the Colville Confederated Tribes' environmental programs furthered the purposes for which the Colville Indian Reservation was created. The Court

3. President Reagan's January 24, 1983, Indian Policy Statement, supra note 1.

4. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 557 (1832).

5. See Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148 (1973).

recognized that the continuing obligation of the Federal Government to provide "a homeland for the survival and growth of the Indians," was served by the efforts of the Colville Tribal Government to protect all lands, waters and resources located within the extensive boundaries of the Reservation ("Reservation Environment").^{6/}

III. TRIBAL GOVERNMENTS AND FEDERAL ENVIRONMENTAL LAW

As a general rule, unless Congress specifically provides otherwise, State civil regulatory jurisdiction does not reach within the exterior boundaries of an Indian reservation.^{7/} The Water Quality Act of 1987 ("Clean Water Act" or "CWA") neither acknowledges State authority over Indian reservations nor delegates Federal authority to States over Indian reservations.^{8/} Therefore, State water quality programs are not applicable to Indian lands.^{9/}

Because Reservation Environments are outside the scope of State regulatory jurisdiction, Federal and Tribal water quality

6. Colville Confederated Tribes v. Walton, 647 F.2d 42, 49 (9th Cir. 1981) cert denied, 454 U.S. 1092 (1981).

7. See McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973). This rule, however, has been modified in some situations by the U.S. Supreme Court. See discussion of Preemption, Section IV. F, infra. at 50.

8. Pub. L. 100-4, 100th Cong. 2d. Sess. (Feb. 4, 1987). 33 USC §1251, et seq.

9. EPA recognizes that Federal, not State regulatory authority extends to Indian lands. Additionally, Congress has authorized EPA to treat Tribes as states under the CWA. See Pub. L. 100-4 at §518, 33 USC §1377. See also, Bryan v. Itasca County, 426 U.S. 373 (1976) (articulating standards for construing Congressional grants of power to States over Indians).

control programs must provide for the type of comprehensive regulation of Reservation Environments contemplated by the CWA.^{10/}

A. THE CLEAN WATER ACT

1. Tribal Primacy

Congress, acting in concert with Federal Indian Policy, recently amended several key environmental statutes and provided for Tribal regulation of the Reservation Environment.^{11/} The 1987 Amendments to the Clean Water Act now authorize EPA to treat Indian Tribes as states.^{12/} For CWA purposes, Section 518(h)(1) defines Federal Indian Reservations as:

10. See eg. 52 Fed. Reg. 17634, May 11, 1987, (asserting EPA authority under the SDWA and recognizing the absence of State jurisdiction in Indian Country). EPA has long recognized the inapplicability of State environmental regulatory jurisdiction over Indian reservations. See EPA General Counsel Opinion No. 77-6 re: State Jurisdiction Over Indians Living On Tribal Lands (May 31, 1977); EPA General Counsel Opinion No. 76-25 re: State Jurisdiction Over Federal Facilities and Indian Tribes under Part B of the Safe Drinking Water Act (Nov. 15, 1976); Furthermore, in its more recent approvals of State program delegations under the Safe Drinking Water Act Underground Injection Control Program the EPA has taken the following position with regard to a state's assertion of jurisdiction over Indian land: "EPA will assume that a State lacks authority unless the State affirmatively asserts its authority and supports its assertions with an analysis from the State Attorney General..." 47 Fed. Reg. 17578 (April 23, 1982); 48 Fed. Reg. 2938 (Jan. 21, 1983).

11. The trend began in June, 1986, with the passage of the Amendments to the Safe Drinking Water Act ("SDWA") 42 U.S.C. 300(f) et seq., which authorized EPA to treat Indian tribes as states. This trend continued in October, 1984, when Congress extended tribal authority over the environment with the passage of amendments to the Comprehensive Environmental Response, Compensation and Liability Act ("Superfund") 42 U.S.C. 9601 et seq.

12. 33 U.S.C. 1251 et seq.

All lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.
[Emphasis supplied.]

Thus, both trust and fee lands located within the exterior boundaries of Indian reservations are subject to Tribal regulatory jurisdiction under an EPA approved Tribal water quality management program.

Section 518(e) of the CWA sets out the three pronged test by which Tribes may achieve "state-like status." Indian Tribes must demonstrate that they:

(a) Have a governing body carrying out substantial duties and powers;

(b) Manage and protect water resources within the borders of their reservation; and

(c) Are capable of their capability to carry out water program management functions in a manner consistent with the CWA.

EPA recently published its proposed regulations for implementing the "Indian Primacy" under the Safe Drinking Water Act Amendments of 1986 ("SDWA").^{13/} Tribal Primacy is important as once a Tribe has convinced EPA of its ability to manage environmental programs and qualified for "primacy," the Tribe may implement a broad range of water pollution control programs.

¹³. The SDWA Proposed regulations are illustrative of the regulations likely to be proposed by EPA under the CWA for tribal water program approval. Thus, the SDWA Indian Primacy regulations merit careful consideration by the Swinomish Senate.

Under the CWA an Indian Tribe may obtain program delegation from EPA to implement point and non-point water pollution control programs, and may also request grant funding for program-implementation. CWA Section 518(e). Section 518(d) of the CWA also provides for EPA's approval of cooperative agreements between Tribes and States.^{14/} Where consistent with the Tribe's best interest such cooperative agreements could coordinate CWA planning, development and implementation between Tribal and State Government.

In the area of grant funding, Section 518(f) of the CWA provides that one-third of one percent of EPA's appropriation under Section 319 be set aside and disbursed to approved Tribal nonpoint source programs. To qualify for this funding, an Indian Tribe must meet the three basic Section 518(e)(1-3) criteria described above, as well as the requirements set forth in Section 319. Additional grant funding for Tribal nonpoint source programs is available under Section 205(j) of the CWA.

14. Cooperative agreements between Tribes and States are not a new phenomenon. Hundreds of agreements have been negotiated. See American Law Center, Handbook of State-Tribal Relations (1983). Tribal-state agreements are commonly used to implement the Indian Child Welfare Act of 1978. Cooperative agreements have been entered into between Tribes and States and between Tribes and the Federal government. See Cooperative Agreement, between U.S./EPA and Northern Cheyenne Tribe regarding implementation of the Northern Cheyenne Air Quality Program (April 16, 1984). See also American Indian Lawyer Training Program Handbook: The Indian Child Welfare Act (1983). Cooperative agreements, however, may not be implemented by unilateral action of one party. Cf. Kennerly v. District Court of Montana, 400 U.S. 423 (1971).

For a survey of cooperative agreements between Tribes and States, See Commission on State-Tribal Relations, State-Tribal Agreements: A Comprehensive Study (May 1981).

2. Water Quality Standards

Tribes may now establish their own water quality standards ("WQS") for reservation surface waters. This is a very important development as WQS are the foundation of all management and enforcement programs under the CWA. Tribal WQS may also be made enforceable by incorporation into either: (1) point source discharge permits ("NPDES") under Section 402; or (2) nonpoint source best management practice ("BMPs"), under Section 319.

As discussed above, State WQS exist as a matter of State and not Federal law. The Agency's approval of State WQS affirms their technical adequacy and acknowledges that Federal promulgation of State WQS is not necessary."¹⁵/ However, neither State WQS, nor State water quality management programs, are applicable within the exterior boundaries of an Indian reservation.

Thus, Tribal or Federal WQS must be in place for the CWA to have force and effect on Indian reservations. Of the two, Tribal WQS better serve the particular local needs and conditions of the Swinomish Tribal Community.

Once the Administrator has determined that a Tribe meets the Section 518(e) criteria of the CWA, Tribal government may request

15. Memorandum Legal Opinion by G. William Frick, Associate General Counsel, Water to Daniel J. Snyder III, Regional Administrator, EPA Region III and John A. Green, Regional Administrator, EPA Region VIII. Subject : Revision of Water Quality Standards and Implementation Plans Under Section 303 of the Federal Water Pollution Act at 3 (Feb. 3, 1975). This legal opinion goes on to state that "the water quality standards are not directly enforceable. The water quality standards are to be implemented primarily through the issuance of permits pursuant to Section 402 and it is the provisions of the NPDES permits which are the actual enforceable requirements..." Id. at 4.

full or partial program delegation from EPA. Where a Tribe assumes the responsibility for CWA program administration, the Tribal regulations may not be less stringent than the applicable Federal requirements. The Tribe must also demonstrate its authority to implement the program as a matter of Tribal law.

3. Funding Under the CWA.

The CWA provides for grant funding to help Tribes develop and implement programs. For example, Section 106 provides for annual water quality management program implementation grants to assist Tribes in carrying out pollution control programs. One third of one percent of EPA's appropriations under Section 319 of the CWA may be used by Tribes which qualify under Section 518(e)(1-3) and 319 for non-point source control programs. Additional funding is also available to tribes under Section 518(a) which allows 100% grant funding for development of Tribal waste treatment management plans and construction of Tribally owned sewage treatment works.

It is unlikely, however, that the level of Federal funding available will cover the full financial impact on a Tribe which assumes primary responsibility for water quality program development and implementation. At the outset, Tribes must also be aware of the Federal requirements which attach to program funding and development.^{16/}

16. Once a Tribe has a program in its place and is approved by the Administrator, the Tribe must:

1. Develop WQS and an implementation plan under CWA Section 303, and submit these standards to the Administrator for approval.

Tribal water quality management progress will be strengthened through EPA approval. For example, the CWA provides for Tribal inspection, monitoring and entry authority over point sources of pollution located within the reservation.^{17/} Moreover, any on-reservation Federal license or permit issued under the CWA would require that Tribal Section 401 Certification be obtained or otherwise waived before the permit or license may be issued. When a Tribe has a valid basis for denying Section 401 Certification, the Federal license or permit may not be issued.

Although the tribe will have primary enforcement responsibility, EPA remains responsible to insure that the CWA is carried out. Where a Tribe fails to initiate or prosecute appropriate

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2. Prepare biennial reservation water quality inventories for submittal to the Administrator pursuant to CWA Section 305. This report will:

[D]escribe the water quality of all navigable waters in the reservation, an analysis of the extent that navigable waters provide for protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, an analysis of the extent that elimination of discharge of pollutants have been or will be achieved by the requirements of the Act and additional action necessary for achievement, an estimate of environmental impact, social and economic benefits of achievement and an estimated date of achievement, and finally, a description of the nature and extent of nonpoint sources of pollutants and recommendations as to the programs which must be undertaken to control each category of source with an estimate of costs for implementation.

17. 33 U.S.C. 1318.

enforcement action EPA may do so.^{18/} In the area of enforcement, cooperative agreements or contracts between the Tribe and EPA could serve to clarify how the program will be administered.

B. THE SAFE DRINKING WATER ACT

The 1974 Safe Drinking Water Act ("SDWA") was enacted to provide EPA with Federal authority to protect public health by regulating surface and subsurface drinking water sources. The SDWA establishes a national regulatory program to protect the quality of drinking water from known contaminating sources.

1. Tribal Program Development

The SDWA as amended in 1986, was the first Federal environmental law to authorize the Administrator of EPA to "treat Indian Tribes as States."^{19/} The SDWA also made grant funding and technical assistance available to Indian Tribes. Under Section 1451 of the SDWA, EPA is empowered to delegate primary enforcement authority to Indian Tribal government. Tribes may now regulate public water systems and the underground injection of wastes on their reservations.

On March 11, 1987 EPA proposed regulations clarifying its role as administrator of all Underground Injection Control Programs on Indian reservations in the State of Washington.^{20/}

18. 33 U.S.C. 1319.

19. 42 U.S.C. Section 1451 (a)(1). See 52 F.R. 28112 et seq. (July 27, 1987), (proposed primary regulations for implementation of Tribal SDWA programs).

20. 52 FR 17691, (March 11, 1987) proposing to amend 40 CFR 147.2403. Final regulations had not been promulgated by completion of this project.

On July 27, 1987 the Administrator of EPA promulgated proposed regulations to guide EPA in determining which Tribes may assume direct responsibility for implementing SDWA programs. The proposed regulations provide that Indian Tribes may assume primary enforcement responsibility ("primacy") of SDWA Underground Injection Control ("UIC") and Public Water Supply ("PWS") programs.^{21/} The SDWA Amendments preceded the CWA Amendments by approximately seven months. As the Tribal program approval criteria under the SDWA and CWA are almost identical, the SDWA "primacy" regulations are indicative of how EPA will implement Tribal program under the CWA.

To qualify for primacy under the SDWA an Indian Tribe must be recognized by the Secretary of the Interior and have a governing body carrying out substantial governmental duties and powers. Section 1451(b)(1)(A). The definition of Indian Tribe under Section 518(e)(1) of the CWA effectively incorporates the same requirement. The balance of the SDWA test for Tribal primacy under Section 1451(b)(1)(A) is the same as the test set out under the CWA Section 518(e)(1). Both the SDWA and CWA require that a Tribe have a governing body carrying out substantial governmental duties and powers in the area of natural resource management.

21. 52 FR 28112 (July 27, 1987). Proposing to amend 40 CFR Parts 35, 124, 142, 143, 144, 145, and 146. Regulations for Tribal administration of the SDWA Wellhead Protection and Sole Source Aquifer Programs will be promulgated at a future date. 52 FR 28112.

Under the SDWA, EPA has defined "substantial governmental functions" in the following manner:

Many Indian tribal governments perform essential governmental functions traditionally performed by sovereign governments. Examples of such functions could include, but are not limited to, the power to tax, the power of eminent domain, and the police power (i.e., the power to provide for the public health, safety and general welfare of the affected population).^{22/}

The SDWA requires that the functions exercised by Tribal governments be within the Tribe's jurisdiction. Section 1451(b)(1)(B). The comparable CWA provision requires that Tribal governmental functions pertain to the management and protection of water resources. Section 518(e)(2). The final prong of the test under each of the statutes is almost identical. Both the SDWA and CWA require that:

the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.^{23/}

Although yet untested, the Administrator's decision making under the SDWA and the CWA will be strongly influenced by Federal Indian Policy and the Federal trust responsibility.

22. 52 FR 28113 (July 27, 1987).

23. SDWA Section 1451(b)(1)(C) and CWA Section 518(e)(3) used the word "title" instead of the word "Act"; however the meaning is the same.

C. IMPLEMENTATION OF THE SWQMP

The implementation phase is key to overall success of the Swinomish Water Quality Management Program ("SWQMP"). EPA regulations provide that implementation may include the construction of treatment works, regulatory or nonregulatory point and non-point source control programs. Moreover, the SWQMP may also include legislative initiatives, enforcement and other activities to meet water quality goals.^{24/}

Tribal implementation of the SWQMP on the Swinomish Reservation is consistent with current Federal Indian policy. In his Indian Policy Statement of January 24, 1983, the President affirmed the Administration's twin goals of promoting Tribal self-government and maintaining the special government-to-government relationship that exists between the Tribal governments and the Federal government. the President stated his intent to enable Tribal governments, along with State and local governments, to resume control over their own affairs.

The following section will review the legal foundation for the Swinomish Tribal Community to adopt and enforce regulatory measures applicable to all surface and groundwater resources within the extensive boundaries of the Swinomish Reservation.

IV. TRIBAL POWER TO REGULATE WATER POLLUTION SOURCES

Tribal power to regulate those on-reservation activities which may pollute Tribal water resources is derived from two

^{24.} See 40 C.F.R. 35.1503(g).

principal sources. One source is the Tribe's proprietary rights: the Tribe has all rights and powers of a property owner with respect to Tribal property. A more fundamental and pervasive source, however, is the Tribe's inherent sovereignty, which includes the power to regulate the use of property over which the Tribe has jurisdiction and control.^{25/}

A. TRIBAL PROPRIETARY RIGHTS

Like any property owner, the Tribe may control activities on lands it owns in fee or which are held by the Federal government in trust for the benefit of the Tribe.^{26/} As a proprietor, the Tribe may condition entry upon its lands upon compliance with Tribal law. The Tribe also has the power to exclude non-members from Indian lands.^{27/} The Supreme Court has recognized the right of Tribal governments to exclude persons from Tribal property.^{28/}

Though closely related to sovereign rights, these rights are separate and distinct.^{29/} The court Supreme Court in Merrion v.

25. See Powers of Indian Tribes, 55 I.D. 14 (1934), reprinted in I Opinions of the Solicitor 445, 467; Dept. of the Interior, Federal Indian Law 440 (1958); see also Merrion v. Jicarilla Apache Tribe, 102 S.Ct. 894, 901-906 (1982).

26. See Morris v. Hitchcock, 194 U.S. 384 (1904); Barta V. Oglala Sioux Tribe, 259 F.2d 553, 556 (8th Cir. 1958).

27. Merrion v. Jicarilla Apache Tribe, supra note 40, at 901-906.

28. Merrion v. Jicarilla Apache Tribe 455 U.S. 130; 102 S.Ct. 894,906 (1982).

29. The Court in Merrion v. Jacarilla Apache Tribe, 102 S.Ct. 894, 906, has approvingly quoted Cohen's Federal Indian Law, and found that:

"Over tribal lands, the tribe has the rights of a landowner as well as the rights of a local government.

Jicarilla Apache Tribe found that:

Nonmembers who lawfully enter tribal lands remain subject to the tribe's power to exclude them. This power necessarily includes the lesser power to place conditions on entry, on continued presence, or on reservation conduct. (emphasis original).^{30/}

The Tribe may, by contract or lease condition, require that all proposed on-reservation construction, timber harvest or industrial activities, or other pollution-causing conduct comply with Tribal environmental regulations, including the proposed SWQMP. Thus, development contracts or leases may include mechanisms to implement the Tribe's pollution-control regulations. For example, compliance with BMPs, submission to Tribal inspections, emergency response measures, or the imposition of liquidated damages for noncompliance can be included and made enforceable as lease conditions.

In the related context of Tribal air pollution regulation, one commentator observed that "the lease itself could replace the permit as the implementation tool."^{31/} In 1981, the Colville

dominion as well as sovereignty. But over all the lands of the reservation, whether owned by the tribe, by members thereof, or by outsiders, the tribe has the sovereign power of determining the conditions upon which persons shall be permitted to enter its domain, to reside therein, and to do business, provided only such determination is consistent with applicable Federal laws and does not infringe any vested rights of persons now occupying reservation lands under lawful authority.'" (emphasis supplied by Supreme Court).

30. Id. at 905.

31. National Commission on Air Quality, Draft Report on the Role of Indian Tribes 61 (1980).

Confederated Tribes did in fact impose BACT particulate emission controls as a matter of contract for a proposed mining project that was to take place on the Colville Indian Reservation.^{32/}

In addition to its proprietary rights in Tribal lands, the Swinomish Tribal Community possesses legally enforceable surface and groundwater rights. In United States v. Winters,^{33/} the Supreme Court found that establishment of an Indian Reservation necessarily implied reservation of a proprietary water right. This holding was based upon the Court's conclusion that, without such a reserved water right, the land of the Fort Belknap Reservation would have been valueless. Implied Indian water rights have also been held to exist where water was "essential to the life of the Indian people."^{34/}

In Colville Confederated Tribes v. Walton,^{35/} the Ninth Circuit applied the reserved water right doctrine to the Colville Reservation and determined that:

As in Winters, the Indians relinquished extensive land and water holdings when the reservation was created. Some gave up valuable tracts with extensive improvements....Congress intended to deal fairly

32. "Air Quality Control Agreement - Mount Tollman Project," entered into by the U.S. Environmental Protection Agency; Confederated Tribes of the Colville Indian Reservation; U.S. Department of the Interior - Bureau of Indian Affairs; U.S. Geological Survey; and AMAX, Inc. (1981).

33. United States v. Winters, 207 U.S. 564, 576 (1908).

34. Arizona v. California, 373 U.S. 546, 599 (1963) (recognizing the importance of water for "the animals [the Indians] hunted and the crops they raised").

35. Colville Confederated Tribes v. Walton, supra, note 7.

with the Indians by reserving waters without which their lands would be useless....We hold that water was reserved when the Colville Reservation was created.^{36/}

A necessary corollary to the Tribe's reserved water right is a Tribal right to unpolluted water.^{37/} The value of the Tribe's reserved water right is, of course, inextricably intertwined with the quality of such waters. There is an obligation of the Federal Government to protect habitat affecting water quality or other resources off reservation when Tribes have a right to such resources.^{38/}

67. Id. at 46-7.

37. For a clear recognition of necessary water quality aspects of Winters rights, Pyramid v. Morton 354 F. Supp. 252 (D.D.C. (1973) (Preventing a water diversion that would disrupt the salinity and erosion balance of Pyramid Lake and damage the Tribal fishery resource); and Confederated Salish and Kootenai Tribes, etc. v. Namen, 665 F.2d 951, 964 (9th Cir. 1982) (recognizing Tribal authority to regulate the shores of Flathead Lake when shoreline activity threatened increased water pollution and damage to the Lake's ecology)... Tribal reserved rights are not diminished by operation of the McCarma Amendment. See Arizona v. San Carlos Apache Tribe, 463 U.S. 545; Colorado Water Conservation District v. United States, 424 U.S. 800; White Mountain Apache Tribe v. Hodel, 784 F.2d 921, 924 (9th Cir. 1986).

38. Discussion of off-reservation environmental protection is beyond scope of this analysis. But see, Colorado v. New Mexico, 103 S.Ct. 539 (1982), (where the Court held that a state's right to water under the equitable apportionment doctrine imposes a duty on sister states to protect water quality); see also United States v. Washington, (Phase II) 506 F.Supp. 187 (W.D. Wash. 1980) (finding a reserved environmental right for tribes entitled to salmon in the Pacific Northwest) this decision was appealed to a three judge panel; Washington v. United States, 694 F.2d 1374 (9th Cir. 1982) which was vacated and heard by an en banc panel; the en banc opinion was vacated and a per curiam opinion issued at 759 F.2d 1353 (9th Cir. 1985) cert. denied 106 S.Ct. 407 (1985) (basically deciding that question of reserved environmental right and responsibility of federal government to actively protect that right not yet ripe). See also "The Environmental Right to Habitat Protection: A Schappy Solution" 61

Congress, the Federal courts and EPA have consistently acknowledged Tribal regulatory jurisdiction over on-reservation environmental matters.^{39/} Moreover, the Ninth Circuit has recognized the right of the Colville Confederated Tribes to regulation a stream located wholly within the Reservation. In Colville Confederated Tribes v. Walton, the Court found that, "[r]egulation of water on a reservation is critical to the lifestyle of its residents and the development of its resources."^{40/}

An important case in this evolving area of the law is Holly v Totus^{41/} which involved the ability of the Yakima Indian Nation to adopt and implement its Tribal Water Code with regard to the allocation of waters in excess of the Nation's Winter reserved

University of Washington Law Review 731 (1986). Traditionally, reserved rights have been ignored by suits for injunctive relief in Federal court. See e.g., Walton, 647 F.2d 42, 53 (9th Cir. 1981) cert. denied 454 U.S. 1092 (1981).

39. It is arguable that Congress may have expressly allowed tribes to adjudicate water rights within tribal jurisdiction through the 1987 Clean Water Act Amendments. Congress stated:

It is the policy of Congress that the authority of each state [and Indian tribes are treated as states for the purposes of this section - 33 U.S.C. 1377(a)] to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. 33 U.S.C. 1251(g).

40. 647 F.2d 42, at 52.

41. Holly v. Totus 665 F. Supp. 548 (E.D. Wash. 1983) (aff'd in part, rev'd in part and remanded) 749 F.2d 37, (1984), "Unpublished Opinion"; Holly v. Conf. Tr. & Bands of Yakima Indian Nation 655 F. Supp. 557 (on remand) (E.D. Wash. 1985) (aff'd 812 F.2d 714 (1987)) (cert. petitioned for); (case also called Holly v. City of Toppenish).

rights.^{42/} Finding no Tribal jurisdiction to regulate excess water, the District Court granted the state of Washington's Motion for Summary Judgment.^{43/} The Court based its opinion in part on the fact that the Department of Interior had not approved or adopted the Yakima Water Code, and the fact that the Code claimed to extend Tribal criminal jurisdiction over non-Indians.^{44/}

The Court implicitly relies on the two part test set out in Montana v. U.S.^{45/} in determining whether the Tribe had jurisdiction over non-members.^{46/} The District Court found that the Tribe did not demonstrate that: (1) non-Indian action threatened the political integrity, economic security, or health and welfare of the Tribe; nor (2) non-Indians had entered into any agreements

42. Winter rights are water rights needed to fulfill the primary purposes for which the land was reserved. See Holly 655 F.Supp.557,558. See also Winters v. United States 207 U.S. 564 (1908); and Colville Confederated Tribes v. Walton 647 F.2d 42 (9th Cir. 1981), cert. denied, 454 U.S. 1092, (1981).

43. This case was appealed and the Ninth Circuit Court of Appeals ruled that the criminal penal provision did not invalidate the Code in its entirety, and remanded the case back to District Court. See Holly, 655 F.Supp. 557,558. On remand, the District Court again granted the State's motion for summary judgement, holding the Code could not extend tribal civil regulatory jurisdiction over non-Indian's use of surplus water. Id. at 59.

44. Holly 655 F.Supp. 548, 551-53.

45. 450 U.S. 544, (1982).

46. Holly 655 F.Supp. 557,559; see Holly 655 F.Supp.548,554.

or dealings with the Tribe that would warrant the exercise of civil jurisdiction.^{47/}

On remand, the District Court found a number of grounds to preclude the Nation's assertion of civil regulatory authority over non-Indians. Perhaps most important, The Court found that the Nation had not demonstrated that its ability to regulate excess waters had an impact on either the health or welfare of the Reservation population or the political integrity of the Tribe. The Court utilized a balancing test analysis without examining the issue of pre-emption under the environmental laws.^{48/} Finally, no finding was made as to whether the State or Federal government should regulate excess waters of non-Indians on the Yakima Reservation.^{49/}

B. TRIBAL TREATY RIGHTS TO HABITAT PROTECTION

Specific Indian treaty rights provide further incentive for Federal resource management agencies to work with Indian Tribes toward the implementation of reservation coastal management programs. Recent court decisions indicate an extension of Indian Treaty rights, including those of the Swinomish Tribal Community, to include environmental quality rights.

47. Holly 655 F.Supp.557,559. Note that the District Court considers the Montana test a separate test from the pre-emption analysis. Id. at n. 3, p.559, citing Colville Confederated Tribes v. Walton 647 F.2d at 52.

48. Holly 655 F.Supp.557,559.

49. Id. at 559.

CERTIFIED PUBLIC ACCOUNTANTS

To the Tribal Senate
Swinomish Indian Tribal Community

We understand that the Swinomish Indian Tribal Community is a potential recipient of various contract and grant awards from certain Federal and state agencies. Many of these agencies require recipients of contract and grant awards to maintain internal accounting and administrative control procedures which provide reasonable assurance as to safeguarding of assets, reliability of accounting data, efficiency of operations and adherence to management systems of the Swinomish Indian Tribal Community and the related internal controls to determine if the existing system and controls are in compliance with the standards set forth in Title 25, Chapter 1, of the Code of Federal Regulations, Part 276.7 by providing for the following:

1. Accurate, current, and complete disclosure of the financial results of each contract and grant program.
2. Records which identify adequately the source and application of funds for each contract and grant program.
3. Effective control over the accountability for all contracts and grant funds, real and personal property.
4. Comparison of actual with budgeted amounts for each contract in the grant or subgrant.
5. Procedures to minimize the time elapsing between the transfer of funds from the U.S. treasury and their disbursement by the grantee.
6. Procedures for determining the allowability and allocability of costs according to applicable cost principles.
7. Accounting records which are adequately supported by reliable documentation.
8. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The management of Swinomish Indian Tribal Community is responsible for establishing and maintaining a system of internal accounting control. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related cost of control procedures. The objectives of a system are to provide management with reasonable, but not absolute assurance, that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with

management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any system of internal accounting control, errors or irregularities may occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in condition, or that the degree of compliance with the procedures may deteriorate.

We understand that procedures in conformity with the criteria referred to in the first paragraph of this report are considered by most agencies to be adequate for their purpose, and that procedures not in conformity with those criteria indicate some inadequacy for such purposes. Based on this understanding and our review and testing of the management systems for recordkeeping, personnel, property, procurement, and financial management, we believe that the Swinomish Indian Tribal Community systems are generally adequate for federal and state purposes. The systems are in place and in use.

This report is intended for the information of the Swinomish Indian Tribal Community and federal and state granting agencies designated by the Tribal Council; it should not be used for any other purpose.

Moss Adams

Bellingham, Washington
April 6, 1989